

Tax Amendments

LONG TITLE

General Description:

This bill amends the Revenue and Taxation title.

Highlighted Provisions:

This bill:

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Monies Appropriated in this Bill:

None

Other Special Clauses:

None

List of sections affected:

AMENDS:

59-10-103

59-10-201

59-10-201.1

59-10-202

59-10-204

59-10-205

59-10-206

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31 59-10-210

32 59-10-1106

33 59-10-1206.1

34

35 ENACTS:

36 59-10-1015.1

37

38 REPEALS:

39 59-10-206

40 Statutory text:

41 **59-10-103. Definitions.**

42 (1) As used in this chapter:

43 (a) "Adjusted gross income":

44 (i) for a resident or nonresident individual, is as defined in Section 62, Internal

45 Revenue Code; or

46 (ii) for a resident or nonresident estate or trust, is as calculated in Section 67(e),

47 Internal Revenue Code.

48 (b) "Adoption expenses" means:

49 (i) any actual medical and hospital expenses of the mother of the adopted child which

50 are incident to the child's birth;

51 (ii) any welfare agency fees or costs;

52 (iii) any child placement service fees or costs;

53 (iv) any legal fees or costs; or

54 (v) any other fees or costs relating to an adoption.

55 (c) "Adult with a disability" means an individual who:

56 (i) is 18 years of age or older;

57 (ii) is eligible for services under Title 62A, Chapter 5, Services for People with

58 Disabilities; and

59 (iii) is not enrolled in:

60 (A) an education program for students with disabilities that is authorized under

61 Section 53A-15-301; or

62 (B) a school established under Title 53A, Chapter 25, Schools for the Deaf and Blind.

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63 ~~[(d) (i) For purposes of Subsection 59-10-114(2)(i), "capital gain transaction" means a~~
64 ~~transaction that results in a:~~

65 ~~—— (A) short-term capital gain; or~~

66 ~~—— (B) long-term capital gain.~~

67 ~~—— (ii) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the~~
68 ~~commission may by rule define the term "transaction."]~~

69 ~~[(e) "Commercial domicile" means the principal place from which the trade or business~~
70 ~~of a Utah small business corporation is directed or managed.]~~

71 ~~[(f)]~~ (d) "Corporation" includes:

72 (i) associations;

73 (ii) joint stock companies; and

74 (iii) insurance companies.

75 ~~[(g)]~~ (e) "Dependent child with a disability" means an individual 21 years of age or
76 younger who:

77 (i) (A) is diagnosed by a school district representative under rules adopted by the
78 State Board of Education as having a disability classified as:

79 (I) autism;

80 (II) deafness;

81 (III) preschool developmental delay;

82 (IV) dual sensory impairment;

83 (V) hearing impairment;

84 (VI) intellectual disability;

85 (VII) multidisability;

86 (VIII) orthopedic impairment;

87 (IX) other health impairment;

88 (X) traumatic brain injury; or

89 (XI) visual impairment;

90 (B) is not receiving residential services from:

91 (I) the Division of Services for People with Disabilities created under Section

92 62A-5-102; or

93 (II) a school established under Title 53A, Chapter 25, Schools for the Deaf and Blind;

94 and

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(C) is enrolled in:

(I) an education program for students with disabilities that is authorized under Section 53A-15-301; or

(II) a school established under Title 53A, Chapter 25, Schools for the Deaf and Blind;

or

(ii) is identified under guidelines of the Department of Health as qualified for:

(A) Early Intervention; or

(B) Infant Development Services.

~~(f)~~ (f) "Distributable net income" is as defined in Section 643, Internal Revenue Code.

~~(g)~~ (g) "Employee" is as defined in Section 59-10-401.

~~(h)~~ (h) "Employer" is as defined in Section 59-10-401.

~~(i)~~ (i) "Federal taxable income":

(i) for a resident or nonresident individual, means taxable income as defined by

Section 63, Internal Revenue Code; or

(ii) for a resident or nonresident estate or trust, is as calculated in Section 641(a) and (b), Internal Revenue Code.

~~(j)~~ (j) "Fiduciary" means:

(i) a guardian;

(ii) a trustee;

(iii) an executor;

(iv) an administrator;

(v) a receiver;

(vi) a conservator; or

(vii) any person acting in any fiduciary capacity for any individual.

(k) "Guaranteed annuity interest" is as defined in 26 C.F.R. Sec. 1.170A-6(c)(2).

~~(l)~~ (l) "Homesteaded land diminished from the Uintah and Ouray Reservation"

means the homesteaded land that was held to have been diminished from the Uintah and Ouray Reservation in Hagen v. Utah, 510 U.S. 399 (1994).

~~(m)~~ (m) "Individual" means a natural person and includes aliens and minors.

~~(n)~~ (n) "Irrevocable trust" means a trust in which the settlor may not revoke or terminate all or part of the trust without the consent of a person who has a substantial

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127 beneficial interest in the trust and the interest would be adversely affected by the exercise of
128 the settlor's power to revoke or terminate all or part of the trust.

129 ~~[(p)] For purposes of Subsection 59-10-114(2)(i), "long-term capital gain" is as defined~~
130 ~~in Section 1222, Internal Revenue Code.]~~

131 ~~[(q)] (o)~~ "Nonresident individual" means an individual who is not a resident of this
132 state.

133 ~~[(r)] (p)~~ "Nonresident trust" or "nonresident estate" means a trust or estate which is
134 not a resident estate or trust.

135 ~~[(s)] (q)~~ (i) "Partnership" includes a syndicate, group, pool, joint venture, or other
136 unincorporated organization:

137 (A) through or by means of which any business, financial operation, or venture is
138 carried on; and

139 (B) which is not, within the meaning of this chapter:

140 (I) a trust;

141 (II) an estate; or

142 (III) a corporation.

143 (ii) "Partnership" does not include any organization not included under the definition of
144 "partnership" in Section 761, Internal Revenue Code.

145 (iii) "Partner" includes a member in a syndicate, group, pool, joint venture, or
146 organization described in Subsection (1)~~[(s)] (q)~~(i).

147 (r) "Qualified nongrantor charitable lead trust" means a trust:

148 (i) that is irrevocable;

149 (ii) that has a trust term measured by:

150 (A) a fixed term of years; or

151 (B) the life of a person living on the day on which the trust is created;

152 (iii) under which:

153 (A) a portion of the value of the trust assets is distributed during the trust term:

154 (I) to an organization described in Section 170(c), Internal Revenue Code; and

155 (II) as a:

156 (Aa) guaranteed annuity interest; or

157 (Bb) unitrust interest; and

158 (B) assets remaining in the trust at the termination of the trust term are distributed to a

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- 159 beneficiary:
160 (I) designated in the trust; and
161 (II) that is not an organization described in Section 170(c), Internal Revenue Code;
162 (iv) for which the trust is allowed a deduction under Section 642(c), Internal Revenue
163 Code; and
164 (v) under which the grantor of the trust is not treated as the owner of any portion of the
165 trust for federal income tax purposes.
- 166 ~~[(t) "Qualifying military servicemember" means a member of:~~
167 ~~—— (i) The Utah Army National Guard;~~
168 ~~—— (ii) The Utah Air National Guard; or~~
169 ~~—— (iii) the following if the member is assigned to a unit that is located in the state:~~
170 ~~—— (A) The Army Reserve;~~
171 ~~—— (B) The Naval Reserve;~~
172 ~~—— (C) The Air Force Reserve;~~
173 ~~—— (D) The Marine Corps Reserve; or~~
174 ~~—— (E) The Coast Guard Reserve.]~~
- 175 ~~[(u) "Qualifying stock" means stock that is:~~
176 ~~—— (i) (A) common; or~~
177 ~~—— (B) preferred;~~
178 ~~—— (ii) as defined by the commission by rule, originally issued to:~~
179 ~~—— (A) a resident or nonresident individual; or~~
180 ~~—— (B) a partnership if the resident or nonresident individual making a subtraction from~~
181 ~~federal taxable income in accordance with Subsection 59-10-114(2)(l):~~
182 ~~—— (I) was a partner when the stock was issued; and~~
183 ~~—— (II) remains a partner until the last day of the taxable year for which the resident or~~
184 ~~nonresident individual makes the subtraction from federal taxable income in accordance with~~
185 ~~Subsection 59-10-114(2)(l); and~~
186 ~~—— (iii) issued:~~
187 ~~—— (A) by a Utah small business corporation;~~
188 ~~—— (B) on or after January 1, 2003; and~~
189 ~~—— (C) for:~~
190 ~~—— (I) money; or~~

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191 ~~— (II) other property, except for stock or securities.]~~

192 ~~(v)~~ (s) (i) "Resident individual" means:

193 (A) an individual who is domiciled in this state for any period of time during the
194 taxable year, but only for the duration of the period during which the individual is domiciled in
195 this state; or

196 (B) an individual who is not domiciled in this state but:

197 (I) maintains a permanent place of abode in this state; and

198 (II) spends in the aggregate 183 or more days of the taxable year in this state.

199 (ii) For purposes of Subsection (1) ~~(v)~~ (s) (i)(B), a fraction of a calendar day shall be
200 counted as a whole day.

201 ~~(w)~~ (t) "Resident estate" or "resident trust" is as defined in Section 75-7-103.

202 ~~(x) For purposes of Subsection 59-10-114(2)(I), "short-term capital gain" is as defined~~
203 ~~in Section 1222, Internal Revenue Code.]~~

204 ~~(y)~~ (u) "Taxable income" or "state taxable income":

205 (i) subject to Subsection 59-10-302(2), for a resident individual other than a resident
206 individual described in Subsection (1) ~~(y)~~ (u) (iii), means the resident individual's federal
207 taxable income after making the:

208 (A) additions and subtractions required by Section 59-10-114; and

209 (B) adjustments required by Section 59-10-115;

210 (ii) for a nonresident individual other than a nonresident individual described in
211 Subsection (1) ~~(y)~~ (u) (iii), is as defined in Section 59-10-116;

212 (iii) for a resident or nonresident individual that collects and pays a tax described in

213 Part 12, Single Rate Individual Income Tax Act, is as defined in Section 59-10-1202;

214 (iv) for a resident estate or trust, is as calculated under Section 59-10-201.1; and

215 (v) for a nonresident estate or trust, is as calculated under Section 59-10-204.

216 ~~(z)~~ (v) "Taxpayer" means any individual, estate, or trust or beneficiary of an estate
217 or trust, whose income is subject in whole or part to the tax imposed by this chapter.

218 (w) "Trust term" means a time period:

219 (i) beginning on the day on which a qualified nongrantor charitable lead trust is
220 created; and

221 (ii) ending on the day on which the qualified nongrantor charitable lead trust described
222 in Subsection (1)(w)(i) terminates.

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223 ~~[(aa)]~~ (x) "Uintah and Ouray Reservation" means the lands recognized as being
224 included within the Uintah and Ouray Reservation in:

225 (i) Hagen v. Utah, 510 U.S. 399 (1994); and

226 (ii) Ute Indian Tribe v. Utah, 114 F.3d 1513 (10th Cir. 1997).

227 (y) "Unadjusted income" means an amount equal to the difference between:

228 (i) the total income required to be reported by a resident or nonresident estate or trust
229 on the resident or nonresident estate's or trust's federal income tax return for estates and
230 trusts for the taxable year; and

231 (ii) the sum of the following:

232 (A) fees paid or incurred to the fiduciary of a resident or nonresident estate or trust:

233 (I) for administering the resident or nonresident estate or trust; and

234 (II) that the resident or nonresident estate or trust deducts as allowed on the resident
235 or nonresident estate's or trust's federal income tax return for estates and trusts for the
236 taxable year;

237 (B) the income distribution deduction that a resident or nonresident estate or trust
238 deducts under Section 651 or 661, Internal Revenue Code, as allowed on the resident or
239 nonresident estate's or trust's federal income tax return for estates and trusts for the taxable
240 year;

241 (C) the amount that a resident or nonresident estate or trust deducts as a deduction
242 for estate tax or generation skipping transfer tax under Section 691(c), Internal Revenue
243 Code, as allowed on the resident or nonresident estate's or trust's federal income tax return
244 for estates and trusts for the taxable year; and

245 (D) the amount that a resident or nonresident estate or trust deducts as a personal
246 exemption under Section 642(b), Internal Revenue Code, as allowed on the resident or
247 nonresident estate's or trust's federal income tax return for estates and trusts for the taxable
248 year.

249 (z) "Unitrust interest" is as defined in 26 C.F.R. Sec. 1.170A-6(c)(2).

250 ~~[(bb)]~~ (i) ~~"Utah small business corporation" means a corporation that:~~

251 ~~—— (A) is a small business corporation as defined in Section 1244(c)(3), Internal Revenue~~
252 ~~Code;~~

253 ~~—— (B) except as provided in Subsection (1)(bb)(ii), meets the requirements of Section~~
254 ~~1244(c)(1)(C), Internal Revenue Code; and~~

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255 ~~—— (C) has its commercial domicile in this state.~~

256 ~~—— (ii) Notwithstanding Subsection (1)(bb)(i)(B), the time period described in Section~~
257 ~~1244(c)(1)(C) and Section 1244(c)(2), Internal Revenue Code, for determining the source of~~
258 ~~a corporation's aggregate gross receipts shall end on the last day of the taxable year for~~
259 ~~which the resident or nonresident individual makes a subtraction from federal taxable income~~
260 ~~in accordance with Subsection 59-10-114(2)(f).]~~

261 ~~[(ee)]~~ (aa) "Ute tribal member" means a person who is enrolled as a member of the
262 Ute Indian Tribe of the Uintah and Ouray Reservation.

263 ~~[(dd)]~~ (bb) "Ute tribe" means the Ute Indian Tribe of the Uintah and Ouray
264 Reservation.

265 ~~[(ee)]~~ (cc) "Wages" is as defined in Section 59-10-401.

266 (2) (a) Any term used in this chapter has the same meaning as when used in
267 comparable context in the laws of the United States relating to federal income taxes unless a
268 different meaning is clearly required.

269 (b) Any reference to the Internal Revenue Code or to the laws of the United States
270 shall mean the Internal Revenue Code or other provisions of the laws of the United States
271 relating to federal income taxes that are in effect for the taxable year.

272 (c) Any reference to a specific section of the Internal Revenue Code or other
273 provision of the laws of the United States relating to federal income taxes shall include any
274 corresponding or comparable provisions of the Internal Revenue Code as hereafter
275 amended, redesignated, or reenacted.

276 **59-10-114. Additions to and subtractions from federal taxable income of an** 277 **individual.**

278 (1) There shall be added to federal taxable income of a resident or nonresident
279 individual:

280 (a) the amount of any income tax imposed by this or any predecessor Utah individual
281 income tax law and the amount of any income tax imposed by the laws of another state, the
282 District of Columbia, or a possession of the United States, to the extent deducted from
283 adjusted gross income in determining federal taxable income;

284 (b) a lump sum distribution that the taxpayer does not include in adjusted gross
285 income on the taxpayer's federal individual income tax return for the taxable year;

286 (c) for taxable years beginning on or after January 1, 2002, the amount of a child's

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287 income calculated under Subsection (5) that:

288 (i) a parent elects to report on the parent's federal individual income tax return for the
289 taxable year; and

290 (ii) the parent does not include in adjusted gross income on the parent's federal
291 individual income tax return for the taxable year;

292 (d) 25% of the personal exemptions, as defined and calculated in the Internal
293 Revenue Code;

294 (e) a withdrawal from a medical care savings account and any penalty imposed in the
295 taxable year if:

296 (i) the resident or nonresident individual did not deduct or include the amounts on the
297 resident or nonresident individual's federal individual income tax return pursuant to Section
298 220, Internal Revenue Code;

299 (ii) the withdrawal is subject to Subsections 31A-32a-105(1) and (2); and

300 (iii) the withdrawal is deducted by the resident or nonresident individual under
301 Subsection (2)(h);

302 (f) the amount withdrawn under Title 53B, Chapter 8a, Higher Education Savings
303 Incentive Program, from the account of a resident or nonresident individual who is an
304 account owner as defined in Section 53B-8a-102, for the taxable year for which the amount
305 is withdrawn, if that amount withdrawn from the account of the resident or nonresident
306 individual who is the account owner:

307 (i) is not expended for higher education costs as defined in Section 53B-8a-102; and

308 (ii) is:

309 (A) subtracted by the resident or nonresident individual:

310 (I) who is the account owner; and

311 (II) in accordance with Subsection (2)(i); or

312 (B) used as the basis for the resident or nonresident individual who is the account
313 owner to claim a tax credit under Section 59-10-1206.1;

314 (g) except as provided in Subsection (6), for taxable years beginning on or after
315 January 1, 2003, for bonds, notes, and other evidences of indebtedness acquired on or after
316 January 1, 2003, the interest from bonds, notes, and other evidences of indebtedness issued
317 by one or more of the following entities:

318 (i) a state other than this state;

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- 319 (ii) the District of Columbia;
- 320 (iii) a political subdivision of a state other than this state; or
- 321 (iv) an agency or instrumentality of an entity described in Subsections (1)(g)(i) through
- 322 (iii);
- 323 (h) subject to Subsection (2)(n), any distribution received by a resident beneficiary of
- 324 a resident trust of income that was taxed at the trust level for federal tax purposes, but was
- 325 subtracted from state taxable income of the trust pursuant to Subsection 59-10-202(2)(c);
- 326 (i) any distribution received by a resident beneficiary of a nonresident trust of
- 327 undistributed distributable net income realized by the trust on or after January 1, 2004, if that
- 328 undistributed distributable net income was taxed at the trust level for federal tax purposes,
- 329 but was not taxed at the trust level by any state, with undistributed distributable net income
- 330 considered to be distributed from the most recently accumulated undistributed distributable
- 331 net income; and
- 332 (j) any adoption expense:
- 333 (i) for which a resident or nonresident individual receives reimbursement from another
- 334 person; and
- 335 (ii) to the extent to which the resident or nonresident individual deducts that adoption
- 336 expense:
- 337 (A) under Subsection (2)(c); or
- 338 (B) from federal taxable income on a federal individual income tax return.
- 339 (2) There shall be subtracted from federal taxable income of a resident or nonresident
- 340 individual:
- 341 (a) the interest or a dividend on obligations or securities of the United States and its
- 342 possessions or of any authority, commission, or instrumentality of the United States, to the
- 343 extent that interest or dividend is included in gross income for federal income tax purposes
- 344 for the taxable year but exempt from state income taxes under the laws of the United States,
- 345 but the amount subtracted under this Subsection (2)(a) shall be reduced by any interest on
- 346 indebtedness incurred or continued to purchase or carry the obligations or securities
- 347 described in this Subsection (2)(a), and by any expenses incurred in the production of
- 348 interest or dividend income described in this Subsection (2)(a) to the extent that such
- 349 expenses, including amortizable bond premiums, are deductible in determining federal
- 350 taxable income;

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351 (b) 1/2 of the net amount of any income tax paid or payable to the United States after
352 all allowable credits, as reported on the United States individual income tax return of the
353 taxpayer for the same taxable year;

354 (c) the amount of adoption expenses for one of the following taxable years as elected
355 by the resident or nonresident individual:

356 (i) regardless of whether a court issues an order granting the adoption, the taxable
357 year in which the adoption expenses are:

358 (A) paid; or

359 (B) incurred;

360 (ii) the taxable year in which a court issues an order granting the adoption; or

361 (iii) any year in which the resident or nonresident individual may claim the federal
362 adoption expenses credit under Section 23, Internal Revenue Code;

363 (d) amounts received by taxpayers under age 65 as retirement income which, for
364 purposes of this section, means pensions and annuities, paid from an annuity contract
365 purchased by an employer under a plan which meets the requirements of Section 404(a)(2),
366 Internal Revenue Code, or purchased by an employee under a plan which meets the
367 requirements of Section 408, Internal Revenue Code, or paid by the United States, a state,
368 or political subdivision thereof, or the District of Columbia, to the employee involved or the
369 surviving spouse;

370 (e) for each taxpayer age 65 or over before the close of the taxable year, a \$7,500
371 personal retirement exemption;

372 (f) 75% of the amount of the personal exemption, as defined and calculated in the
373 Internal Revenue Code, for each dependent child with a disability and adult with a disability
374 who is claimed as a dependent on a taxpayer's return;

375 (g) subject to the limitations of Subsection (3)(e), amounts a taxpayer pays during the
376 taxable year for health care insurance, as defined in Title 31A, Chapter 1, General
377 Provisions:

378 (i) for:

379 (A) the taxpayer;

380 (B) the taxpayer's spouse; and

381 (C) the taxpayer's dependents; and

382 (ii) to the extent the taxpayer does not deduct the amounts under Section 125, 162, or

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213, Internal Revenue Code, in determining federal taxable income for the taxable year;

(h) (i) except as provided in this Subsection (2)(h), the amount of a contribution made during the taxable year on behalf of the taxpayer to a medical care savings account and interest earned on a contribution to a medical care savings account established pursuant to Title 31A, Chapter 32a, Medical Care Savings Account Act, to the extent the contribution is accepted by the account administrator as provided in the Medical Care Savings Account Act, and if the taxpayer did not deduct or include amounts on the taxpayer's federal individual income tax return pursuant to Section 220, Internal Revenue Code; and

(ii) a contribution deductible under this Subsection (2)(h) may not exceed either of the following:

(A) the maximum contribution allowed under the Medical Care Savings Account Act for the tax year multiplied by two for taxpayers who file a joint return, if neither spouse is covered by health care insurance as defined in Section 31A-1-301 or self-funded plan that covers the other spouse, and each spouse has a medical care savings account; or

(B) the maximum contribution allowed under the Medical Care Savings Account Act for the tax year for taxpayers:

(I) who do not file a joint return; or

(II) who file a joint return, but do not qualify under Subsection (2)(h)(ii)(A);

(i) subject to Subsection (1)(f), the amount of a qualified investment as defined in Section 53B-8a-102 that:

(i) a resident or nonresident individual who is an account owner as defined in Section 53B-8a-102 makes during the taxable year;

(ii) the resident or nonresident individual described in Subsection (2)(i)(i) does not deduct on a federal individual income tax return; and

(iii) does not exceed the maximum amount of the qualified investment that may be subtracted from federal taxable income for a taxable year in accordance with Subsections 53B-8a-106(1)(e) and (f);

(j) for taxable years beginning on or after January 1, 2000, any amounts paid for premiums for long-term care insurance as defined in Section 31A-1-301 to the extent the amounts paid for long-term care insurance were not deducted under Section 213, Internal Revenue Code, in determining federal taxable income;

(k) for taxable years beginning on or after January 1, 2000, if the conditions of

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415 Subsection (4)(a) are met, the amount of income derived by a Ute tribal member:

416 (i) during a time period that the Ute tribal member resides on homesteaded land

417 diminished from the Uintah and Ouray Reservation; and

418 (ii) from a source within the Uintah and Ouray Reservation;

419 (l) (i) for taxable years beginning on or after January 1, 2003, the total amount of a

420 resident or nonresident individual's short-term capital gain or long-term capital gain on a

421 capital gain transaction:

422 (A) that occurs on or after January 1, 2003;

423 (B) if 70% or more of the gross proceeds of the capital gain transaction are

424 expended:

425 (l) to purchase qualifying stock in a Utah small business corporation; and

426 (ll) within a 12-month period after the day on which the capital gain transaction

427 occurs; and

428 (C) if, prior to the purchase of the qualifying stock described in Subsection

429 (2)(l)(i)(B)(l), the resident or nonresident individual did not have an ownership interest in the

430 Utah small business corporation that issued the qualifying stock; and

431 (ii) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the

432 commission may make rules:

433 (A) defining the term "gross proceeds"; and

434 (B) for purposes of Subsection (2)(l)(i)(C), prescribing the circumstances under which

435 a resident or nonresident individual has an ownership interest in a Utah small business

436 corporation;

437 ~~[(m) for the taxable year beginning on or after January 1, 2005, but beginning on or~~

438 ~~before December 31, 2005, the first \$2,200 of income a qualifying military servicemember~~

439 ~~receives:~~

440 ~~—— (i) for service:~~

441 ~~—— (A) as a qualifying military servicemember; or~~

442 ~~—— (B) under an order into active service in accordance with Section 39-1-5; and~~

443 ~~—— (ii) to the extent that income is included in adjusted gross income on that resident or~~

444 ~~nonresident individual's federal individual income tax return for that taxable year;]~~

445 ~~[(n)] (m)~~ an amount received by a resident or nonresident individual or distribution

446 received by a resident or nonresident beneficiary of a resident trust:

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(i) if that amount or distribution constitutes a refund of taxes imposed by:

(A) a state; or

(B) the District of Columbia; and

(ii) to the extent that amount or distribution is included in adjusted gross income for

that taxable year on the federal individual income tax return of the resident or nonresident

individual or resident or nonresident beneficiary of a resident trust;

~~[(b)]~~ (n) the amount of a railroad retirement benefit:

(i) paid:

(A) in accordance with The Railroad Retirement Act of 1974, 45 U.S.C. Sec. 231 et seq.;

(B) to a resident or nonresident individual; and

(C) for the taxable year; and

(ii) to the extent that railroad retirement benefit is included in adjusted gross income

on that resident or nonresident individual's federal individual income tax return for that

taxable year; and

~~[(b)]~~ (o) an amount:

(i) received by an enrolled member of an American Indian tribe; and

(ii) to the extent that the state is not authorized or permitted to impose a tax under this part on that amount in accordance with:

(A) federal law;

(B) a treaty; or

(C) a final decision issued by a court of competent jurisdiction.

(3) (a) For purposes of Subsection (2)(d), the amount of retirement income subtracted for taxpayers under 65 shall be the lesser of the amount included in federal taxable income, or \$4,800, except that:

(i) for married taxpayers filing joint returns, for each \$1 of adjusted gross income earned over \$32,000, the amount of the retirement income exemption that may be subtracted shall be reduced by 50 cents;

(ii) for married taxpayers filing separate returns, for each \$1 of adjusted gross income earned over \$16,000, the amount of the retirement income exemption that may be subtracted shall be reduced by 50 cents; and

(iii) for individual taxpayers, for each \$1 of adjusted gross income earned over

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479 \$25,000, the amount of the retirement income exemption that may be subtracted shall be
480 reduced by 50 cents.

481 (b) For purposes of Subsection (2)(e), the amount of the personal retirement
482 exemption shall be further reduced according to the following schedule:

483 (i) for married taxpayers filing joint returns, for each \$1 of adjusted gross income
484 earned over \$32,000, the amount of the personal retirement exemption shall be reduced by
485 50 cents;

486 (ii) for married taxpayers filing separate returns, for each \$1 of adjusted gross income
487 earned over \$16,000, the amount of the personal retirement exemption shall be reduced by
488 50 cents; and

489 (iii) for individual taxpayers, for each \$1 of adjusted gross income earned over
490 \$25,000, the amount of the personal retirement exemption shall be reduced by 50 cents.

491 (c) For purposes of Subsections (3)(a) and (b), adjusted gross income shall be
492 calculated by adding to adjusted gross income any interest income not otherwise included in
493 adjusted gross income.

494 (d) For purposes of determining ownership of items of retirement income common law
495 doctrine will be applied in all cases even though some items may have originated from
496 service or investments in a community property state. Amounts received by the spouse of a
497 living retiree because of the retiree's having been employed in a community property state
498 are not deductible as retirement income of such spouse.

499 (e) For purposes of Subsection (2)(g), a subtraction for an amount paid for health
500 care insurance as defined in Title 31A, Chapter 1, General Provisions, is not allowed:

501 (i) for an amount that is reimbursed or funded in whole or in part by the federal
502 government, the state, or an agency or instrumentality of the federal government or the state;
503 and

504 (ii) for a taxpayer who is eligible to participate in a health plan maintained and funded
505 in whole or in part by the taxpayer's employer or the taxpayer's spouse's employer.

506 (4) (a) A subtraction for an amount described in Subsection (2)(k) is allowed only if:

507 (i) the taxpayer is a Ute tribal member; and

508 (ii) the governor and the Ute tribe execute and maintain an agreement meeting the
509 requirements of this Subsection (4).

510 (b) The agreement described in Subsection (4)(a):

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- 511 (i) may not:
- 512 (A) authorize the state to impose a tax in addition to a tax imposed under this chapter;
- 513 (B) provide a subtraction under this section greater than or different from the
- 514 subtraction described in Subsection (2)(k); or
- 515 (C) affect the power of the state to establish rates of taxation; and
- 516 (ii) shall:
- 517 (A) provide for the implementation of the subtraction described in Subsection (2)(k);
- 518 (B) be in writing;
- 519 (C) be signed by:
- 520 (I) the governor; and
- 521 (II) the chair of the Business Committee of the Ute tribe;
- 522 (D) be conditioned on obtaining any approval required by federal law; and
- 523 (E) state the effective date of the agreement.
- 524 (c) (i) The governor shall report to the commission by no later than February 1 of each
- 525 year regarding whether or not an agreement meeting the requirements of this Subsection (4)
- 526 is in effect.
- 527 (ii) If an agreement meeting the requirements of this Subsection (4) is terminated, the
- 528 subtraction permitted under Subsection (2)(k) is not allowed for taxable years beginning on or
- 529 after the January 1 following the termination of the agreement.
- 530 (d) For purposes of Subsection (2)(k) and in accordance with Title 63, Chapter 46a,
- 531 Utah Administrative Rulemaking Act, the commission may make rules:
- 532 (i) for determining whether income is derived from a source within the Uintah and
- 533 Ouray Reservation; and
- 534 (ii) that are substantially similar to how adjusted gross income derived from Utah
- 535 sources is determined under Section 59-10-117.
- 536 (5) (a) For purposes of this Subsection (5), "Form 8814" means:
- 537 (i) the federal individual income tax Form 8814, Parents' Election To Report Child's
- 538 Interest and Dividends; or
- 539 (ii) (A) for taxable years beginning on or after January 1, 2002, a form designated by
- 540 the commission in accordance with Subsection (5)(a)(ii)(B) as being substantially similar to
- 541 2000 Form 8814 if for purposes of federal individual income taxes the information contained
- 542 on 2000 Form 8814 is reported on a form other than Form 8814; and

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543 (B) for purposes of Subsection (5)(a)(ii)(A) and in accordance with Title 63, Chapter
544 46a, Utah Administrative Rulemaking Act, the commission may make rules designating a
545 form as being substantially similar to 2000 Form 8814 if for purposes of federal individual
546 income taxes the information contained on 2000 Form 8814 is reported on a form other than
547 Form 8814.

548 (b) The amount of a child's income added to adjusted gross income under Subsection
549 (1)(c) is equal to the difference between:

550 (i) the lesser of:

551 (A) the base amount specified on Form 8814; and

552 (B) the sum of the following reported on Form 8814:

553 (I) the child's taxable interest;

554 (II) the child's ordinary dividends; and

555 (III) the child's capital gain distributions; and

556 (ii) the amount not taxed that is specified on Form 8814.

557 (6) Notwithstanding Subsection (1)(g), interest from bonds, notes, and other
558 evidences of indebtedness issued by an entity described in Subsections (1)(g)(i) through (iv)
559 may not be added to federal taxable income of a resident or nonresident individual if, as
560 annually determined by the commission:

561 (a) for an entity described in Subsection (1)(g)(i) or (ii), the entity and all of the
562 political subdivisions, agencies, or instrumentalities of the entity do not impose a tax based
563 on income on any part of the bonds, notes, and other evidences of indebtedness of this
564 state; or

565 (b) for an entity described in Subsection (1)(g)(iii) or (iv), the following do not impose a
566 tax based on income on any part of the bonds, notes, and other evidences of indebtedness
567 of this state:

568 (i) the entity; or

569 (ii) (A) the state in which the entity is located; or

570 (B) the District of Columbia, if the entity is located within the District of Columbia.

571 **59-10-201. Taxation of resident trusts and estates.**

572 (1) [A] Except as provided in Subsection (2), a tax determined in accordance with the
573 rates prescribed by Section 59-10-104 for individuals filing separately is imposed for each
574 taxable year on the state taxable income of each resident estate or trust [, except for trusts].

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(2) The following are not subject to a tax imposed by this part:

(a) a resident estate or trust that is not required to file a federal income tax return for estates and trusts for the taxable year; or

(b) a resident trust taxed as [corporations] a corporation.

(3) A resident estate or trust shall be allowed the credit provided in Section 59-10-1003, relating to an income tax imposed by another state, except that the limitation shall be computed by reference to the taxable income of the estate or trust.

(4) The property of the Utah Educational Savings Plan trust established in Title 53B, Chapter 8a, Higher Education Savings Incentive Program, and its income from operations and investments are exempt from all taxation by the state under this chapter.

59-10-201.1. State taxable income of a resident estate or trust defined.

[The] For a taxable year, the state taxable income of a resident estate or trust means [its federal taxable] the unadjusted income [as calculated in Section 641 (a) and (b), Internal Revenue Code] of the resident estate or trust for that taxable year, as adjusted by Sections 59-10-202, 59-10-209.1, and 59-10-210.

59-10-202. Additions to and subtractions from federal taxable income of a resident or nonresident estate or trust.

(1) There shall be added to [federal taxable] unadjusted income of a resident or nonresident estate or trust:

(a) the amount of any income tax imposed by this or any predecessor Utah individual income tax law and the amount of any income tax imposed by the laws of another state, the District of Columbia, or a possession of the United States, to the extent deducted from federal adjusted total income as defined in Section 62, Internal Revenue Code, in determining federal taxable income;

(b) a lump sum distribution allowable as a deduction under Section 402(d)(3) [of the] Internal Revenue Code, to the extent deductible under Section 62(a)(8) [of the] Internal Revenue Code, in determining adjusted gross income;

(c) except as provided in Subsection (3), for taxable years beginning on or after January 1, 2003, for bonds, notes, and other evidences of indebtedness acquired on or after January 1, 2003, the interest from bonds, notes, and other evidences of indebtedness issued by one or more of the following entities:

(i) a state other than this state;

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- 607 (ii) the District of Columbia;
- 608 (iii) a political subdivision of a state other than this state; or
- 609 (iv) an agency or instrumentality of an entity described in Subsections (1)(c)(i) through
- 610 (iii);
- 611 (d) any portion of federal taxable income for a taxable year if that federal taxable
- 612 income is derived from stock:
- 613 (i) in an S corporation; and
- 614 (ii) that is held by an electing small business trust;
- 615 (e) (i) the amount withdrawn under Title 53B, Chapter 8a, Higher Education Savings
- 616 Incentive Program, from the account of a resident or nonresident estate or trust that is an
- 617 account owner as defined in Section 53B-8a-102, for the taxable year for which the amount
- 618 is withdrawn, if that amount withdrawn from the account of the resident or nonresident estate
- 619 or trust that is the account owner:
- 620 (A) is not expended for higher education costs as defined in Section 53B-8a-102; and
- 621 (B) is subtracted by the resident or nonresident estate or trust:
- 622 (I) that is the account owner; and
- 623 (II) in accordance with Subsection (2)(j)(i); and
- 624 (ii) the amount withdrawn under Title 53B, Chapter 8a, Higher Education Savings
- 625 Incentive Program, from the account of a resident or nonresident estate or trust that is an
- 626 account owner as defined in Section 53B-8a-102, for the taxable year beginning on or after
- 627 January 1, 2007, but beginning on or before December 31, 2007, if that amount withdrawn
- 628 from the account of the resident or nonresident estate or trust that is the account owner:
- 629 (A) is not expended for higher education costs as defined in Section 53B-8a-102; and
- 630 (B) is subtracted by the resident or nonresident estate or trust:
- 631 (I) that is the account owner; and
- 632 (II) in accordance with Subsection (2)(j)(ii); and
- 633 (f) any fiduciary adjustments required by Section 59-10-210.
- 634 (2) There shall be subtracted from ~~federal taxable~~ unadjusted income of a resident
- 635 or nonresident estate or trust:
- 636 (a) the interest or a dividend on obligations or securities of the United States and its
- 637 possessions or of any authority, commission, or instrumentality of the United States, to the
- 638 extent that interest or dividend is included in gross income for federal income tax purposes

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639 for the taxable year but exempt from state income taxes under the laws of the United States,
640 but the amount subtracted under this Subsection (2) shall be reduced by any interest on
641 indebtedness incurred or continued to purchase or carry the obligations or securities
642 described in this Subsection (2), and by any expenses incurred in the production of interest
643 or dividend income described in this Subsection (2) to the extent that such expenses,
644 including amortizable bond premiums, are deductible in determining federal taxable income;

645 ~~[(b) 1/2 of the net amount of any income tax paid or payable to the United States after~~
646 ~~all allowable credits, as per the United States fiduciary income tax return of the taxpayer for~~
647 ~~the same taxable year;]~~

648 ~~[(c)]~~ (b) income of an irrevocable resident trust if:

649 (i) the income would not be treated as state taxable income derived from Utah
650 sources under Section 59-10-204 if received by a nonresident trust;

651 (ii) the trust first became a resident trust on or after January 1, 2004;

652 (iii) no assets of the trust were held, at any time after January 1, 2003, in another
653 resident irrevocable trust created by the same settlor or the spouse of the same settlor;

654 (iv) the trustee of the trust is a trust company as defined in Subsection 7-5-1(1)(d);

655 (v) the amount subtracted under this Subsection (2) (b) is reduced to the extent the
656 settlor or any other person is treated as an owner of any portion of the trust under Subtitle A,
657 Subchapter J, Subpart E of the Internal Revenue Code; and

658 (vi) the amount subtracted under this Subsection (2) (b) is reduced by any interest on
659 indebtedness incurred or continued to purchase or carry the assets generating the income
660 described in this Subsection (2) (b), and by any expenses incurred in the production of
661 income described in this Subsection (2) (b), to the extent that those expenses, including
662 amortizable bond premiums, are deductible in determining federal taxable income;

663 ~~[(d)]~~ (c) if the conditions of Subsection (4)(a) are met, the amount of income of a
664 resident or nonresident estate or trust derived from a deceased Ute tribal member:

665 (i) during a time period that the Ute tribal member resided on homesteaded land
666 diminished from the Uintah and Ouray Reservation; and

667 (ii) from a source within the Uintah and Ouray Reservation;

668 ~~[(e) (i) for taxable years beginning on or after January 1, 2003, the total amount of a~~
669 ~~resident or nonresident estate's or trust's short-term capital gain or long-term capital gain on~~
670 ~~a capital gain transaction;~~

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671 ~~—— (A) that occurs on or after January 1, 2003;~~
672 ~~—— (B) if 70% or more of the gross proceeds of the capital gain transaction are~~
673 ~~expended;~~
674 ~~—— (I) to purchase qualifying stock in a Utah small business corporation; and~~
675 ~~—— (II) within a 12-month period after the day on which the capital gain transaction~~
676 ~~occurs; and~~
677 ~~—— (C) if, prior to the purchase of the qualifying stock described in Subsection~~
678 ~~(2)(e)(i)(B)(I), the resident or nonresident estate or trust did not have an ownership interest in~~
679 ~~the Utah small business corporation that issued the qualifying stock; and~~
680 ~~—— (ii) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the~~
681 ~~commission may make rules:~~
682 ~~—— (A) defining the term "gross proceeds"; and~~
683 ~~—— (B) for purposes of Subsection (2)(e)(i)(C), prescribing the circumstances under which~~
684 ~~a resident or nonresident estate or trust has an ownership interest in a Utah small business~~
685 ~~corporation;~~
686 ~~—— (f) for the taxable year beginning on or after January 1, 2005, but beginning on or~~
687 ~~before December 31, 2005, the first \$2,200 of income of a resident or nonresident estate or~~
688 ~~trust that is derived from a deceased qualifying military servicemember:~~
689 ~~—— (i) for service:~~
690 ~~—— (A) as a qualifying military servicemember; or~~
691 ~~—— (B) under an order into active service in accordance with Section 39-1-5; and~~
692 ~~—— (ii) to the extent that income is included in total income on that resident or nonresident~~
693 ~~estate's or trust's federal income tax return for estates and trusts for that taxable year;]~~
694 ~~[(g)] (d)~~ any amount:
695 (i) received by a resident or nonresident estate or trust;
696 (ii) that constitutes a refund of taxes imposed by:
697 (A) a state; or
698 (B) the District of Columbia; and
699 (iii) to the extent that amount is included in total income on that resident or
700 nonresident estate's or trust's federal tax return for estates and trusts for that taxable year;
701 ~~[(h)] (e)~~ the amount of a railroad retirement benefit:
702 (i) paid:

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703 (A) in accordance with The Railroad Retirement Act of 1974, 45 U.S.C. Sec. 231 et
704 seq.;

705 (B) to a resident or nonresident estate or trust derived from a deceased resident or
706 nonresident individual; and

707 (C) for the taxable year; and

708 (ii) to the extent that railroad retirement benefit is included in total income on that
709 resident or nonresident estate's or trust's federal tax return for estates and trusts;

710 ~~(f)~~ (f) an amount:

711 (i) received by a resident or nonresident estate or trust if that amount is derived from
712 a deceased enrolled member of an American Indian tribe; and

713 (ii) to the extent that the state is not authorized or permitted to impose a tax under this
714 part on that amount in accordance with:

715 (A) federal law;

716 (B) a treaty; or

717 (C) a final decision issued by a court of competent jurisdiction;

718 ~~(f)~~ (i) subject to Subsection (1)(e)(i), for taxable years beginning on or after January 1,
719 2007, the amount of a qualified investment as defined in Section 53B-8a-102 that:

720 (A) a resident or nonresident estate or trust that is an account owner as defined in
721 Section 53B-8a-102 makes during the taxable year;

722 (B) the resident or nonresident estate or trust described in Subsection (2)~~(f)~~ (g) (i)(A)
723 does not deduct on a federal tax return for estates and trusts; and

724 (C) does not exceed the maximum amount of the qualified investment that may be
725 subtracted from federal taxable income for a taxable year in accordance with Subsections
726 53B-8a-106(1)(e) and (f); and

727 (ii) subject to Subsection (1)(e)(ii), for the taxable year beginning on or after January
728 1, 2007, but beginning on or before December 31, 2007 only, and in addition to any
729 subtraction a resident or nonresident estate or trust that is an account owner as defined in
730 Section 53B-8a-102 makes in accordance with Subsection (2)~~(f)~~ (g) (i), the amount of a
731 qualified investment as defined in Section 53B-8a-102 that:

732 (A) a resident or nonresident estate or trust that is an account owner as defined in
733 Section 53B-8a-102 could have subtracted under Subsection (2)~~(f)~~ (g) (i) for the taxable
734 year beginning on or after January 1, 2006, but beginning on or before December 31, 2006,

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735 had the subtraction under Subsection (2)~~(f)~~ (g) (i) been in effect for the taxable year
736 beginning on or after January 1, 2006, but beginning on or before December 31, 2006;

737 (B) the resident or nonresident estate or trust described in Subsection (2)~~(f)~~ (g) (ii)(A)
738 makes during the taxable year beginning on or after January 1, 2006, but beginning on or
739 before December 31, 2006;

740 (C) the resident or nonresident estate or trust described in Subsection (2)~~(f)~~ (g) (ii)(A)
741 does not deduct on a federal tax return for estates and trusts; and

742 (D) does not exceed the maximum amount of the qualified investment that may be
743 subtracted from federal taxable income:

744 (I) for the taxable year beginning on or after January 1, 2006, but beginning on or
745 before December 31, 2006; and

746 (II) in accordance with Subsections 53B-8a-106(1)(e) and (f); and

747 (h) the amount that a qualified nongrantor charitable lead trust deducts under Section
748 642(c), Internal Revenue Code, as a charitable contribution deduction, as allowed on the
749 qualified nongrantor charitable lead trust's federal income tax return for estates and trusts for
750 the taxable year; and

751 ~~(f)(i)~~ (i) any fiduciary adjustments required by Section 59-10-210.

752 (3) Notwithstanding Subsection (1)(c), interest from bonds, notes, and other
753 evidences of indebtedness issued by an entity described in Subsections (1)(c)(i) through (iv)
754 may not be added to ~~federal taxable~~ unadjusted income of a resident or nonresident estate
755 or trust if, as annually determined by the commission:

756 (a) for an entity described in Subsection (1)(c)(i) or (ii), the entity and all of the political
757 subdivisions, agencies, or instrumentalities of the entity do not impose a tax based on
758 income on any part of the bonds, notes, and other evidences of indebtedness of this state; or

759 (b) for an entity described in Subsection (1)(c)(iii) or (iv), the following do not impose a
760 tax based on income on any part of the bonds, notes, and other evidences of indebtedness
761 of this state:

762 (i) the entity; or

763 (ii) (A) the state in which the entity is located; or

764 (B) the District of Columbia, if the entity is located within the District of Columbia.

765 (4) (a) A subtraction for an amount described in Subsection (2)~~(d)~~ (c) is allowed only
766 if:

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767 (i) the income is derived from a deceased Ute tribal member; and
768 (ii) the governor and the Ute tribe execute and maintain an agreement meeting the
769 requirements of this Subsection (4).

770 (b) The agreement described in Subsection (4)(a):
771 (i) may not:
772 (A) authorize the state to impose a tax in addition to a tax imposed under this chapter;
773 (B) provide a subtraction under this section greater than or different from the
774 subtraction described in Subsection (2)~~[(d)]~~ (c); or
775 (C) affect the power of the state to establish rates of taxation; and
776 (ii) shall:
777 (A) provide for the implementation of the subtraction described in Subsection (2)~~[(d)]~~
778 (c);
779 (B) be in writing;
780 (C) be signed by:
781 (I) the governor; and
782 (II) the chair of the Business Committee of the Ute tribe;
783 (D) be conditioned on obtaining any approval required by federal law; and
784 (E) state the effective date of the agreement.

785 (c) (i) The governor shall report to the commission by no later than February 1 of each
786 year regarding whether or not an agreement meeting the requirements of this Subsection (4)
787 is in effect.

788 (ii) If an agreement meeting the requirements of this Subsection (4) is terminated, the
789 subtraction permitted under Subsection (2)~~[(d)]~~ (c) is not allowed for taxable years beginning
790 on or after the January 1 following the termination of the agreement.

791 (d) For purposes of Subsection (2)~~[(d)]~~ (c) and in accordance with Title 63, Chapter
792 46a, Utah Administrative Rulemaking Act, the commission may make rules:
793 (i) for determining whether income is derived from a source within the Uintah and
794 Ouray Reservation; and
795 (ii) that are substantially similar to how adjusted gross income derived from Utah
796 sources is determined under Section 59-10-117.

797 **59-10-204. State taxable income of a nonresident estate or trust defined.**
798 ~~[The]~~ For a taxable year, the state taxable income of a nonresident estate or trust

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799 ~~[shall be its state taxable]~~ means an amount calculated by:

800 (1) determining the unadjusted income ~~[as calculated in Section 59-10-201.1,]~~ of the
801 nonresident estate or trust for that taxable year, as adjusted by Sections 59-10-202,
802 59-10-207, 59-10-209.1, and 59-10-210; and

803 (2) calculating the portion of the amount determined under Subsection (1) that is
804 derived from Utah sources determined in accordance with the principles of Section
805 59-10-117~~[, and adjusted as provided in Section 59-10-207].~~

806 **59-10-205. Tax on income derived from Utah sources.**

807 ~~[A tax]~~ (1) Except as provided in Subsection (2), a tax determined in accordance with
808 the tax rate imposed under Section 59-10-104 is imposed for each taxable year on the state
809 taxable income~~[, as calculated in Section 59-10-204, of every]~~, as determined under Section
810 59-10-204, of each nonresident estate or trust ~~[in accordance with the rates prescribed in~~
811 ~~Section 59-10-104 for individuals filing separately. The tax shall only be applied to income~~
812 ~~derived from Utah sources as adjusted by Section 59-10-207, including such items from~~
813 ~~another estate or trust of which the first estate or trust is a beneficiary].~~

814 (2) The following are not subject to a tax imposed by this part:

815 (a) a nonresident estate or trust that is not required to file a federal income tax return
816 for estates and trusts for the taxable year; or

817 (b) a nonresident trust taxed as a corporation.

818 **59-10-210. Fiduciary adjustments.**

819 (1) A share of the fiduciary adjustments described in Subsection (2) shall be added to
820 or subtracted from ~~[federal taxable]~~ unadjusted income:

821 (a) of:

822 (i) a resident or nonresident estate or trust; or

823 (ii) a resident or nonresident beneficiary of a resident or nonresident estate or trust;

824 and

825 (b) as provided in this section.

826 (2) For purposes of Subsection (1), the fiduciary adjustments are the following
827 amounts:

828 (a) the additions to and subtractions from ~~[federal taxable]~~ unadjusted income of a
829 resident or nonresident estate or trust required by Section 59-10-202, except for Subsection
830 59-10-202(2)(b); and

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(b) a tax credit claimed by a resident or nonresident estate or trust as allowed by:

(i) Section 59-6-102;

(ii) Part 10, Nonrefundable Tax Credit Act;

(iii) Part 11, Refundable Tax Credit Act;

(iv) Section 59-13-202;

(v) Section 63-38f-413; or

(vi) Section 63-38f-503.

(3) (a) The respective shares of an estate or trust and its beneficiaries, including for the purpose of this allocation a nonresident beneficiary, in the state fiduciary adjustments, shall be allocated in proportion to their respective shares of federal distributable net income of the estate or trust.

(b) If the estate or trust described in Subsection (3)(a) has no federal distributable net income for the taxable year, the share of each beneficiary in the fiduciary adjustments shall be allocated in proportion to that beneficiary's share of the estate or trust income for the taxable year that is, under state law or the governing instrument, required to be distributed currently plus any other amounts of that income distributed in that taxable year.

(c) After making the allocations required by Subsections (3)(a) and (b), any balance of the fiduciary adjustments shall be allocated to the estate or trust.

(4) (a) The commission shall allow a fiduciary to use a method for determining the allocation of the fiduciary adjustments described in Subsection (2) other than the method described in Subsection (3) if using the method described in Subsection (3) results in an inequity:

(i) in allocating the fiduciary adjustments described in Subsection (2); and

(ii) if the inequity is substantial:

(A) in amount; and

(B) in relation to the total amount of the fiduciary adjustments described in Subsection (2).

(b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission may make rules authorizing a fiduciary to use a method for determining the allocation of the fiduciary adjustments described in Subsection (2) other than the method described in Subsection (3) if using the method described in Subsection (3) results in an inequity:

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- (i) in allocating the fiduciary adjustments described in Subsection (2); and
- (ii) if the inequity is substantial:
 - (A) in amount; and
 - (B) in relation to the total amount of the fiduciary adjustments described in Subsection (2).

59-10-1015.1. Nonrefundable estate or trust tax credit.

(1) For taxable years beginning on or after January 1, 2008, an estate or trust may claim a nonrefundable tax credit against taxes otherwise due under Part 2, Trusts and Estates, equal to the product of:

(a) the sum of:

(i) the amount that a resident or nonresident estate or trust deducts under Section 163, Internal Revenue Code, for interest paid or accrued, as allowed on the resident or nonresident estate's or trust's federal income tax return for estates and trusts for the taxable year;

(ii) the amount that a resident or nonresident estate or trust deducts under Section 164, Internal Revenue Code, for taxes paid or accrued other than for a tax paid under this chapter for the taxable year, as allowed on the resident or nonresident estate's or trust's federal income tax return for estates and trusts for the taxable year;

(iii) the amount that a resident or nonresident estate or trust other than a qualified nongrantor charitable lead trust deducts under Section 642(c), Internal Revenue Code, as a charitable contribution deduction, as allowed on the resident or nonresident estate's or trust's federal income tax return for estates and trusts for the taxable year;

(iv) subject to Subsection (3), the amount that a resident or nonresident estate or trust deducts as an attorney, accountant, or return preparer fee, as allowed on the resident or nonresident estate's or trust's federal income tax return for estates and trusts for the taxable year; and

(v) subject to Subsection (3), the amount that a resident or nonresident estate or trust deducts as an other deduction or miscellaneous itemized deduction, as allowed on the resident or nonresident estate's or trust's federal income tax return for estates and trusts for the taxable year; and

(b) 6%.

[Tax credit phase out provisions?]

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895 (2) An estate or trust may not carry forward or carry back a tax credit under this section.
896 (3) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act:
897 (a) for purposes of Subsection (1)(a)(iv), the commission may make rules for determining
898 what constitutes an attorney, accountant, or return preparer fee on a federal income tax
899 return for estates and trusts; or
900 (b) for purposes of Subsection (1)(a)(v), the commission may make rules for determining
901 what constitutes an other deduction or miscellaneous itemized deduction on a federal income
902 tax return for estates and trusts.

903 **59-10-1106. Renewable energy tax credit.**

904 (1) As used in this section:

905 (a) "Active solar system" is as defined in Section 59-10-1014.

906 (b) "Biomass system" is as defined in Section 59-10-1014.

907 (c) "Business entity" is as defined in Section 59-10-1014.

908 (d) "Commercial energy system" means any active solar, passive solar, geothermal
909 electricity, direct-use geothermal, geothermal heat-pump system, wind, hydroenergy, or
910 biomass system used to supply energy to a commercial unit or as a commercial enterprise.

911 (e) "Commercial enterprise" means a business entity whose purpose is to produce
912 electrical, mechanical, or thermal energy for sale from a commercial energy system.

913 (f) (i) "Commercial unit" means any building or structure that a business entity uses to
914 transact its business.

915 (ii) Notwithstanding Subsection (1)(f)(i):

916 (A) in the case of an active solar system used for agricultural water pumping or a wind
917 system, each individual energy generating device shall be a commercial unit; and

918 (B) if an energy system is the building or structure that a business entity uses to
919 transact its business, a commercial unit is the complete energy system itself.

920 (g) "Direct-use geothermal system" is as defined in Section 59-10-1014.

921 (h) "Geothermal electricity" is as defined in Section 59-10-1014.

922 (i) "Geothermal heat-pump system" is as defined in Section 59-10-1014.

923 (j) "Hydroenergy system" is as defined in Section 59-10-1014.

924 ~~[(k) "Individual taxpayer" means any person who is a taxpayer as defined in Section~~
925 ~~59-10-103 and an individual as defined in Section 59-10-103.]~~

926 ~~[(f)]~~ (k) "Passive solar system" is as defined in Section 59-10-1014.

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927 ~~[(m)]~~ (l) "Utah Geological Survey" means the Utah Geological Survey established in
928 Section 63-73-5.

929 ~~[(m)]~~ (m) "Wind system" is as defined in Section 59-10-1014.

930 (2) (a) (i) ~~[For taxable years beginning on or after January 1, 2007, a]~~ A business
931 entity that is a claimant, estate, or trust that purchases or participates in the financing of a
932 commercial energy system situated in Utah is entitled to a refundable tax credit as provided
933 in this Subsection (2)(a) if the commercial energy system does not use wind, geothermal
934 electricity, or biomass equipment capable of producing a total of 660 or more kilowatts of
935 electricity and:

936 (A) the commercial energy system supplies all or part of the energy required by
937 commercial units owned or used by the business entity; or

938 (B) the business entity sells all or part of the energy produced by the commercial
939 energy system as a commercial enterprise.

940 (ii) (A) A business entity that is a claimant, estate, or trust is entitled to a tax credit of
941 up to 10% of the reasonable costs of any commercial energy system installed, including
942 installation costs, against any tax due under this chapter for the taxable year in which the
943 commercial energy system is completed and placed in service.

944 (B) Notwithstanding Subsection (2)(a)(ii)(A), the total amount of the credit under this
945 Subsection (2)(a) may not exceed \$50,000 per commercial unit.

946 (C) The credit under this Subsection (2)(a) is allowed for any commercial energy
947 system completed and placed in service on or after January 1, 2007.

948 (iii) A business entity that leases a commercial energy system installed on a
949 commercial unit is eligible for the tax credit under this Subsection (2)(a) if the lessee can
950 confirm that the lessor irrevocably elects not to claim the credit.

951 (iv) Only the principal recovery portion of the lease payments, which is the cost
952 incurred by a business entity in acquiring a commercial energy system, excluding interest
953 charges and maintenance expenses, is eligible for the tax credit under this Subsection (2)(a).

954 (v) A business entity that leases a commercial energy system is eligible to use the tax
955 credit under this Subsection (2)(a) for a period no greater than seven years from the initiation
956 of the lease.

957 (b) (i) ~~[For taxable years beginning on or after January 1, 2007, a]~~ A business entity
958 that is a claimant, estate, or trust that owns a commercial energy system situated in Utah

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959 using wind, geothermal electricity, or biomass equipment capable of producing a total of 660
960 or more kilowatts of electricity is entitled to a refundable tax credit as provided in this section
961 if:

962 (A) the commercial energy system supplies all or part of the energy required by
963 commercial units owned or used by the business entity; or

964 (B) the business entity sells all or part of the energy produced by the commercial
965 energy system as a commercial enterprise.

966 (ii) A business entity is entitled to a tax credit under this Subsection (2)(b) equal to the
967 product of:

968 (A) 0.35 cents; and

969 (B) the kilowatt hours of electricity produced and either used or sold during the
970 taxable year.

971 (iii) The credit allowed by this Subsection (2)(b):

972 (A) may be claimed for production occurring during a period of 48 months beginning
973 with the month in which the commercial energy system is placed in service; and

974 (B) may not be carried forward or back.

975 (iv) A business entity that leases a commercial energy system installed on a
976 commercial unit is eligible for the tax credit under this section if the lessee can confirm that
977 the lessor irrevocably elects not to claim the credit.

978 (3) The tax credits provided for under this section are in addition to any tax credits
979 provided under the laws or rules and regulations of the United States.

980 (4) (a) The Utah Geological Survey may set standards for commercial energy
981 systems claiming a tax credit under Subsection (2)(a) that cover the safety, reliability,
982 efficiency, leasing, and technical feasibility of the systems to ensure that the systems eligible
983 for the tax credit use the state's renewable and nonrenewable energy resources in an
984 appropriate and economic manner.

985 (b) A tax credit may not be taken under this section until the Utah Geological Survey
986 has certified that the commercial energy system has been completely installed and is a viable
987 system for saving or production of energy from renewable resources.

988 (5) The Utah Geological Survey and the commission may make rules in accordance
989 with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, that are necessary to
990 implement this section.

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991 (6) (a) On or before October 1, 2012, and every five years thereafter, the Utah Tax
992 Review Commission shall review each tax credit provided by this section and make
993 recommendations to the Revenue and Taxation Interim Committee concerning whether the
994 credit should be continued, modified, or repealed.

995 (b) The Utah Tax Review Commission's report under Subsection (6)(a) shall include
996 information concerning the cost of the credit, the purpose and effectiveness of the credit, and
997 the state's benefit from the credit.

998 **59-10-1206.1. Utah Educational Savings Plan tax credit.** [This tax credit will be
999 renumbered as part of the language to repeal the traditional individual income tax --
1000 Additional conforming changes in Title 53B, Chapter 8a, Higher Education Savings
1001 Incentive Program, will also need to be made as part of the language to repeal the
1002 traditional individual income tax]

1003 (1) As used in this section:

1004 (a) "Account owner" is as defined in Section 53B-8a-102.

1005 (b) "Claimant" means :

1006 (i) a resident or nonresident individual that has state taxable income under this part ;
1007 or

1008 (ii) a resident or nonresident estate or trust that has state taxable income under this
1009 part .

1010 (c) "Higher education costs" is as defined in Section 53B-8a-102.

1011 (d) "Maximum amount of a qualified investment for the taxable year" means, for a
1012 taxable year:

1013 (i) for a claimant that is an account owner, if that claimant is [a person] other than
1014 husband and wife account owners who file a single return jointly, the maximum amount of a
1015 qualified investment:

1016 (A) listed in Subsection 53B-8a-106(1)(e)(ii); and

1017 (B) increased or decreased for that taxable year in accordance with Subsection
1018 53B-8a-106(1)(f); or

1019 (ii) for claimants who are husband and wife account owners who file a single return
1020 jointly, the maximum amount of a qualified investment:

1021 (A) listed in Subsection 53B-8a-106(1)(e)(iii); and

1022 (B) increased or decreased for that taxable year in accordance with Subsection

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1023 53B-8a-106(1)(f).

1024 (e) "Qualified investment" is as defined in Section 53B-8a-102.

1025 (2) ~~[For taxable years beginning on or after January 1, 2007, a]~~ A claimant that is an
1026 account owner may claim a nonrefundable tax credit equal to the product of:

1027 (a) the lesser of:

1028 (i) the amount of a qualified investment the claimant:

1029 (A) makes during the taxable year; and

1030 (B) does not deduct on the claimant's federal individual income tax return; or

1031 (ii) the maximum amount of a qualified investment for the taxable year if the amount
1032 described in Subsection (2)(a)(i) is greater than the maximum amount of a qualified
1033 investment for the taxable year; and

1034 (b) ~~[(i) for the taxable year beginning on or after January 1, 2007, but beginning on or
1035 before December 31, 2007, 5.35%; or~~

1036 ~~— (ii) for taxable years beginning on or after January 1, 2008,]~~ 5%.

1037 (3) A tax credit under this section may not be carried forward or carried back.

1038 Effective date.

1039 This bill takes effect for taxable years beginning on or after January 1, 2008.